
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
CONTEMPT PETITION (CPCD) NO. 167 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO. 347 OF 2019

1. Amkhim Holdings Pvt. Ltd.
2. Vasant Kotak & Bros. Trading & Investments
Pvt. Ltd. ...Petitioners

Versus

1. Kirti Zaveri (Deleted) Since Deceased
2. Priyanka Mujumdar
3. Ganesh Chhabria
4. Anita Anil Punjabi
5. Vinod Narayandas Punjabi
6. Anil Narayandas Punjabi
7. Sunil Shelar ...Respondents

Mr. Ashutosh Kumbhakoni, Senior Advocate a/w Mr. Gaurav Sharma a/w Mr. Zaman AG i/b Ms. Meenaz Kakalia, for the Petitioner.

Mr. Anoshak Daver a/w Mandar Surve i/b Mayur Shikhare, for the Respondent Nos.3 to 6.

Mr. Laxmikant Patil i/b Mr. Anilkumar K. Patil, for the Respondent No.7.

CORAM: SOMASEKHAR SUNDARESAN, J.
RESERVED ON: JULY 10, 2026
PRONOUNCED ON: JULY 15, 2026

JUDGEMENT :

Context and Factual Background:

1. The captioned Contempt Petition alleges contempt of an order dated October 19, 2018 (“**Status Quo Order**”) passed by a Learned Single Judge of this Court in the captioned Commercial Arbitration Petition No. 347 of 2019 (“**Section 9 Petition**”) filed under Section 9 of the Arbitration and Conciliation Act, 1996 (“**the Act**”). For convenience, the core content of the Status Quo Order is extracted below :-

“2. In the meantime, both the parties shall maintain status quo in respect of the entire suit project, more particularly the unsold flats and the bank accounts. On that day, the parties shall remain present in Court.”

[Emphasis Supplied]

2. The Section 9 Petition had been filed by Amkhim Holdings Private Limited (“**Amkhim**”) along with Vasant Kotak and Bros. Trading & Investment Pvt. Ltd. (“**Kotak**”), who had a partnership in connection with the development of certain properties. This firm acquired development rights in respect of a slum redevelopment project in Andheri for a society called

Andheri Shivshakti Co-operative Housing Society and the sale component of the project was a building titled Eleganzia Royale.

3. In the course of implementing the project, the Petitioners entered into a joint venture agreement with a company called Zaveri Constructions Pvt. Ltd. (***“Zaveri Constructions”***), which would finance the balance redevelopment work. The parties to the joint venture agreed that 21% of the developed area would belong to each of Amkhim and Kotak, and the balance 58% would be available to Zaveri Constructions.

4. In this ratio, Amkhim and Kotak were together entitled to 37 flats while Zaveri Constructions was entitled to 51 flats in Eleganzia Royale. To operationalise the joint venture, on June 2, 2010, Amkhim, Kotak and Zaveri Constructions formed another Partnership Firm (***“Anmol Alliance”***), with the profit-sharing ratio being divided as 21% for Amkhim, 21% for Kotak and 58% for Zaveri Constructions.

5. Owing to disputes and differences on various issues between Zaveri Constructions and the Petitioners (Amkhim and Kotak) who were aligned, the Section 9 Petition was filed on October 16, 2018. The Petitioners would contend that at this time, from among the unsold flats, the Petitioners' share comprised five unsold flats and Zaveri Constructions' share comprised ten unsold flats. The Status Quo Order, extracted above, then came to be passed.

6. Three out of the ten unsold flats falling in Zaveri Constructions' share, namely, Flat Nos. 404, 408 and 1102 ("**Subject Flats**"), form the subject matter of the Contempt Petition. The Petitioners contend that the Subject Flats had been sold and disposed of by Zaveri Constructions to Respondent No. 3 Ganesh Chhabria, Respondent No. 4 Anita Anil Punjabi, Respondent No. 5 Vinod Punjabi, and Respondent No. 6 Anil Punjabi ("**Purchaser-Respondents**") in the teeth of, and in utter violation of, the Status Quo Order, by executing Sale Deeds on May 6, 2019 ("**Sale Deeds**").

7. The Petitioners allege that the Purchaser-Respondents had full knowledge of the Status Quo Order and the pending litigation, among others, in reliance upon public disclosure of the Status Quo Order thanks to publication of the status on the website of the Maharashtra Real Estate Regulatory Authority ("**MahaRERA**").

8. The sale of the Subject Flats has its own peculiar history, which warrants a narration. Zaveri Constructions had availed of a loan from Fedbank Financial Services ("**Fedbank**") to finance the construction for the project sometime in 2015, for which ten flats, including the Subject Flats, had been mortgaged to Fedbank. The Petitioners contend that the execution of the mortgage was without the knowledge and consent of Amkhim and Kotak

although it was effected by Zaveri Constructions in its capacity as a partner of Anmol Alliance.

9. With defaults on the loan, having an outstanding amount of Rs. ~5.81 crores, Fedbank issued a Possession Notice dated March 27, 2018 (**“Possession Notice”**), invoking its powers under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (**“SARFAESI Act”**). Possession by Fedbank, of all ten mortgaged flats, which included the Subject Flats, was asserted in the Possession Notice.

10. The Purchaser-Respondents had already acquired between 2010 and 2017, various flats in Eleganzia Royale i.e. prior to the Status Quo Order. Seven of these flats (Flat Nos. 701, 1101, 1202, 1801, 2001, 2101 and 2104) were included in the list set out in the Possession Notice. Three unsold flats i.e. the Subject Flats were part of the list set out by Fedbank in the Possession Notice.

11. The Possession Notice constituted a notice to the “Borrowers”, essentially Zaveri Constructions and its constituents, giving them an opportunity to redeem the mortgage in terms of Section 13(8) of the SARFAESI Act. As it transpires, the Purchaser-Respondents engaged with Fedbank and acquired the Subject Flats for a sum of Rs. 6.37 crores, which is

said to have been the then outstanding debt due to Fedbank from Zaveri Constructions. Consideration was directly paid to Fedbank, which led to the removal of threat of possession over all the ten flats listed in the Possession Notice, thereby freeing the title of the Purchaser-Respondents to their flats.

12. A First Information Report was filed by the Purchaser-Respondents against the individuals owning and controlling Amkhim, Kotak and Zaveri Constructions, on finding out about the mortgage in favour of Fedbank. A police complaint dated July 30, 2019 was filed with the DN Nagar Police Station and the complaint dated August 21, 2019 was filed with the Economic Offences Wing, Mumbai Police. The Purchaser-Respondents contend that the Contempt Petition is a backlash and counterblast to the aforesaid police complaints.

13. Against this backdrop, I have heard Mr. Ashutosh Kumbhakoni, Learned Senior Advocate on behalf of the Petitioners, Mr. Anoshak Daver, Learned Advocate on behalf of the Purchaser-Respondents and Mr. Laxmikant Patil, Learned Advocate on behalf of Respondent No. 7, Mr. Sunil Shelar(***Shelar***). With their assistance, I have examined the material on record. None has entered appearance on behalf of Respondent No. 2, Ms. Priyanka Mujumdar (***Mujumdar***), the other director of the Zaveri Constructions.

Analysis and Findings:

14. The core allegation in the Contempt Petition is that the Purchaser-Respondents, faced with the Possession Notice, had consciously acquired the Subject Flats to bail out Zaveri Constructions to enable lifting of the Possession Notice, which is directly in the teeth of the Status Quo Order. The Petitioners' contention is that it is not just Zaveri Constructions, but also the Purchaser Respondents who are in contempt of the Status Quo Order.

15. The purchase consideration was paid by the Purchasing-Respondents to Fedbank, which led to all the flats belonging to the Purchaser-Respondents being released from the Possession Notice, and this benefited and aided Zaveri Constructions in discharging its debt owed to Fedbank, and helped the Purchaser Respondents help themselves to flats that were meant to be preserved for the benefit of the Petitioners under the Status Quo Order.

16. The necessary and inexorable consequence of such conduct, according to Mr. Kumbhakoni is that the Sale Deeds are void and must be declared as such, reversing the transactions carried out in violation of the Status Quo Order. Whether to permit the Alleged Contemnors to purge the contempt and the terms on which they may be dispensed punishment, he would submit, is a separate matter but clearly, this Court is duty-bound to annul the transactions

carried out in violation of the Status Quo Order to maintain the majesty of the Court.

17. I have examined the material on record in the context of the gravamen of the charges levelled by the Petitioners and the position in law canvassed on their behalf. At the threshold, it is pertinent to note that in the contempt jurisdiction, once the Petitioners have brought to bear their allegations, assessment of the alleged contempt, whether to exercise jurisdiction under Article 215 of the Constitution of India and what measures to take, lie squarely in the domain of the Court. The Court has to judiciously examine the factual matrix involved, the nature of the actions allegedly constituting contempt and take a view on whether in the Court's opinion, the majesty of the Court has been attacked and what would best serve the interests of law and justice.

18. In this context, I have given my anxious consideration to the material on record.

Allegedly Contemptuous Role of Zaveri Constructions:

19. At the heart of the allegations in the Contempt Petition is the purchase of the Subject Flats by the Purchaser-Respondents when the Status Quo Order was applicable. The execution of the Sale Deeds was between Zaveri Constructions and the Purchaser Respondents. Mr. Kirti Zaveri ("**Kirti**"), the

original founder and promoter of Zaveri Constructions who had taken all decisions on behalf of Zaveri Constructions passed away on May 7, 2021. The Contempt Petition insofar as it relates to him would necessarily abate.

20. The other alleged contemnors who are respondents in the context of conduct of Zaveri Constructions are Mujumdar and Shelar. Shelar had resigned from the Board of Directors of Zaveri Constructions with effect from September 29, 2018, i.e. well before the Status Quo Order came to be passed. The relevant statutory filing evidencing the aforesaid resignation is part of the record. Therefore, the Contempt Petition would stand abated insofar as it pertains to Shelar.

21. There is no specific personal allegation relating to conduct by Mujumdar, who is a director of Zaveri Constructions, indicating her role and intention being brought to bear in the alleged acts of contempt, necessitating taking cognizance of contempt by her, and that too when every action complained of has Kirti's role writ large on behalf of Zaveri Constructions. In any case, the prime prayer on behalf of the Contempt Petitioner is that the Sale Deeds must be mandatorily nullified. In my judgement, in relation to the conduct by Zaveri Constructions, the key *dramatis persona* was Kirti, who has since died. Therefore, in my judgement, no useful purpose would be served and no clear basis exists to bring the heavy hand of the contempt jurisdiction

against Mujumdar, when Kirti, who has played the key role on behalf of Zaveri Constructions, is no more and the contempt alleged against him stands abated.

Status Quo Order and Implications of the Alleged Contempt:

22. Therefore, one must examine the role of the Purchaser-Respondents, who are the counterparties to the Sale Deeds, the execution of which is the alleged act of contempt.

23. There is no dispute that the execution of the Sale Deeds was effected by Kirti and the Purchaser-Respondents when the Status Quo Order was in place. For all purposes of my analysis in this judgement, the existence of the Status Quo Order is assumed to be within the knowledge of the Purchaser-Respondents. This is more so, because the Purchaser-Respondents have stated on oath that they ran from pillar to post when they discovered that a majority of the flats bought by them for valid consideration had been mortgaged to Fedbank, and in doing so, they engaged with Amkhim, Kotak and Zaveri Constructions. It would stand to reason to expect that Amkhim and Kotak would have informed them about the Status Quo Order even if Zaveri Constructions would have suppressed it.

24. The Purchaser-Respondents have contended that all the three constituents of Anmol Alliance kept giving them assurances of paying off Fedbank to clear the title to the flats in question but these assurances turned out to be empty since they did nothing about it. Indeed, the Possession Notice was dated March 27, 2018 while the Sale Deeds were executed only on May 6, 2019 – clearly well over a year later, thereby pointing to the plausibility of such engagement having been undertaken. That, in turn, points to the realistic and reasonable prospect of the Purchaser-Respondents having notice of the Status Quo Order. Therefore, without relying solely on the Petitioners' reading of the correspondence by the Purchaser-Respondents with lawyers of Fedbank, in my view, it is more likely than not, that the Purchaser-Respondents were aware of the Status Quo Order.

25. Therefore, the question to consider is whether the Purchaser-Respondents are guilty of wilful disobedience of the Status Quo Order, even while acknowledging the fact that they were not party to the Section 9 proceedings and their counterparty (although Anmol Alliance) was represented by Zaveri Construction, which was clearly a party to the Section 9 proceedings and therefore bound by the Status Quo Order.

26. If the purchase of the Subject Flats had been made from Fedbank, through any measure under the SARFAESI Act, the purchaser may not be

guilty of *wilful* disobedience of the Status Quo Order and instead would have only borne the risk to title and litigation cost to prove that the pre-existing rights of a prior mortgagee would prevail over an arbitral award in the internal disputes of the partnership. However, in this case, the purchase was from Anmol Alliance, a party bound by the Status Quo Order having executed the Sale Deeds. The following extract from the celebrated treatise *The Law of Contempt: Contempt of Courts and Legislatures* by Samaraditya Pal (Sixth Edition) would be noteworthy:

(c) Third parties who have not aided or abetted—

A person may be liable for contempt even though he is not directly bound by an order of the court and has not aided or abetted the party primarily so bound. In AG v Times News Papers Ltd, 433 Lord Brandon said:

It is, in my opinion, of the utmost importance to formulate with precision the question which falls to be decided in this appeal. For the purpose of such formulation it is necessary to assume a situation in which one person, B, is a party to an action brought against him by another person, A, and the court grants A an injunction restraining B from doing certain acts. Despite the rhetoric employed at times by Mr. Lester the question for decision is not whether such an injunction is binding on a third person, C, who is not a party to the action and is not referred to in the injunction. Clearly such an injunction cannot be binding on C and it has never been contended for the Attorney General that it could. The question for decision is quite another one. It is whether, in the situation assumed, it is a contempt of court for C, with the intention of impeding or prejudicing the administration of justice by

the court in the action between A and B, himself to do the acts which the injunction restrains B from committing.

It seems to me, as a matter of principle that, if Cs conduct, in knowingly doing acts which would, if done by B, be a breach of the injunction against him, results in impedance to or interference with the administration of justice by the court in the action between A and B, then, so far as the question of Cs conduct being a contempt of court is concerned, it cannot make any difference whether such conduct takes the form of aiding and abetting B on the one hand or acting solely of his own volition on the other.

However, any conduct by a third party inconsistent with an order of the court is not enough to constitute contempt. Where it is sought to impose a direct liability of a third party, the justification for doing so lies in that party's interference with the administration of justice. It is not necessary to show that the administration of justice in the relevant proceeding has been wholly frustrated or rendered utterly futile, but it is necessary to show some significant and adverse effect on the administration of justice. Conduct by a third party which is inconsistent with a court order only in a trivial or technical way should not expose the party to conviction for contempt, particularly in recognition of the principle that the restraints on freedom of expression should be no wider than were truly necessary in a democratic society.

[Emphasis Supplied]

27. Therefore, the key question to ask, therefore, is whether the act of the Purchaser-Respondents in executing the Sale Deeds has hindered the administration of justice. In this context, it is noteworthy that the Status Quo Order was a matter of mutual protection of the parties to the dispute in the Section 9 Petition, namely Amkhim and Kotak on the one hand, and Zaveri

Constructions on the other. The *inter se* disputes between these two sides was the subject matter of the arbitration. The temporary measure under Section 9 of the Act in the Status Quo Order was meant to be a mutually applicable protective measure in this context. As will be seen from the analysis later in this judgement, from the very conduct of the parties, it would be difficult to hold that the administration of justice was disturbed.

28. Moreover, when the Possession Notice is assessed in this context, it is apparent that Zaveri Constructions, against whom the Petitioners had a claim in the arbitration, would have been less able to enjoy the fruits of any arbitral award if Fedbank had exercised its mortgage and taken away the ten flats listed in the Possession Notice, at least insofar as such possession and disposal related to the then unsold Subject Flats. These flats, instead of being available to secure an outcome potentially favourable to the Petitioners in their disputes with Zaveri Constructions, would have not even have been available if Fedbank, the prior mortgagee, which was not even a party to the Section 9 Petition and was not bound by the arbitration agreement, were to enforce its statutory rights under the SARFAESI Act.

29. The protection in the Section 9 Order was meant to be a temporary measure of protection pending commencement of arbitration among the partners of Anmol Alliance *inter se*. The arbitration, no matter what the final

arbitral award would have been, could never have eroded the rights of a prior mortgagee such as Fedbank.

30. It is also noteworthy that the Possession Notice did not hold Anmol Alliance out as the “Borrower”. That status was clearly asserted only against Zaveri Constructions. However, the Possession Notice did hold out Anmol Alliance as the “mortgagor” that had willingly mortgaged the secured assets i.e. the ten flats, in favour of Fedbank. The funds raised from Fedbank was applied only to complete the project, the financing of which drove the induction of Zaveri Constructions into the project, with a larger share being given to Zaveri Constructions. The borrowing transaction was in aid of the project. There were disputes among the partners of Anmol Alliance about whether such a mortgage was executed behind the back of the other partners. However, such internal disputes among partners could never undermine the obligations owed by the partnership firm to the world at large.

31. Likewise, the Sale Deeds too were executed for and on behalf of Anmol Alliance with the Purchaser-Respondents. The sale of the Subject Flats was effected, for all relevant purposes, by the partnership firm. The execution may have been by Kirti, but in doing so, he was acting in his capacity as a partner of Anmol Alliance and within the framework of the express or implied authority enjoyed by him to bind Anmol Alliance. The claims by Amkhim and Kotak

against Zaveri Constructions can indeed be pursued on their merits, but that would still be an internal *inter se* dispute among the partners of Anmol Alliance, which would not dilute the obligations owed by Anmol Alliance with third parties i.e. the Purchaser-Respondents who acquired the Subject Flats.

32. Therefore, it would be difficult to conclude that the acts of the Purchaser-Respondents in executing the Sale Deeds, was aimed at hindering and undermining the administration of justice, in order to constitute wilful disobedience and contumacious acts. It would have been another matter if the Purchaser-Respondents had interests aligned with Zaveri Constructions such that an allegation of collusion by them with Kirti could be brought to bear. The evidence is sharply to the contrary – far from their interests being aligned with Zaveri Constructions, the Purchaser-Respondents were at loggerheads and were victims of the mortgage effected on behalf of Anmol Alliance over the very flats sold to the Purchaser Respondents. The Purchaser-Respondents were victims of the allegedly wrongful acts committed by Anmol Alliance acting through Kirti, and could not by any stretch be regarded as having colluded or aided and abetted Kirti in undermining the delivery of justice to Amkhim and Kotak.

33. Mr. Kumbhakoni has contended that knowledge of the Status Quo Order on the part of the Purchaser-Respondents can even be regarded as

totally irrelevant. According to him, all that one needs to do is see whether the Status Quo Order was applicable and whether the admitted execution of the Sale Deeds took place. Once these two facets are borne out, contempt in the part of the Purchaser-Respondents would be an inexorable consequence, and a further inexorable consequence, which he would put as a duty of this Court, is to nullify the Sale Deeds, resulting in the Subject Flats coming back to Anmol Alliance.

34. I am unable to agree for a variety of reasons. As rightly pointed out by Mr. Daver on behalf of the Purchaser-Respondents, flats purchased by them from Anmol Alliance well prior to the Status Quo Order were placed in serious jeopardy when it was discovered that those very flats had been mortgaged to Fedbank. The Purchaser-Respondents found a solution by paying Fedbank the amount owed to it, to release their own flats for which they had paid consideration to Anmol Alliance. Indeed, the constituents of Anmol Alliance were in dispute over their *inter se* rights. But it is hard to conclude that the conduct of the Purchaser-Respondents to secure title to their own flats by paying Fedbank and in turn buying the Subject Flats in consideration of such sale, was an act of aiding and abetting the contempt by the Late Kirti.

Petitioners' Conduct after the Contempt Petition:

35. As it transpires, it would not lie in the Petitioners' mouth to contend that there is an inexorable contempt by third parties to the Section 9 proceedings and that the inexorable outcome is to nullify their purchase of the Subject Flats. This is simply because the Petitioners bought peace with the Purchaser-Respondents by actually executing a Memorandum of Understanding dated February 2, 2022 ("**MOU**"), confirming that they would drop the contempt proceedings and even accepting financial consideration for it, characterised in the MOU as "financial assistance". The Contempt Petition was filed on August 13, 2019. About two years later, Kirti passed away. The MOU was executed by and between Anmol Alliance with its two partners Amkhim and Kotak, as one part, and Respondent No. 3, Mr. Ganesh Chhabria and Respondent No. 5, Mr. Vinod Punjabi, as the other part, whereby title of the Purchaser-Respondents to all 12 flats acquired by the Purchaser-Respondents, including the three Subject Flats, were recorded and confirmed as *bona fide* and legitimate purchases with no dues being outstanding.

36. Specifically, Clause "C" recited in this MOU records that seven flats belonging to the *Punjabi Family* would be given electricity and plumbing connections along with certain amenities and fixtures referred to therein and that interiors for those flats would be carried out by the Punjabi family at its own cost. The Punjabi Family would also assist in selling three flats in Navi Mumbai to Anmol Alliance, with the consideration being payable to the

Punjabi Family. Clause “E” recited in the MOU expressly refers to each of the three Subject Flats along with Flat Nos. 901 and 1101 and confirms that Anmol Alliance would complete all the internal work in them along with all amenities as mentioned in the Sale Deed and the brochure of the building Eleganzia Royale, as published in respect of the project.

37. Mr. Daver rightly points out that in the execution of the MOU, Anmol Alliance was represented by Mr. Narendra Amritlal Popat, the Director and authorized signatory of Amkhim.

38. Clause “F” confirmed that Amkhim and Kotak would withdraw all proceedings (including another Suit as well as these very contempt proceedings) and *lis pendens* created by them immediately and unconditionally. Anmol Alliance has also agreed in Clause “G” recited in the MOU that the names of each of the Purchaser Respondents would be removed from this very Contempt Petition in respect of the Subject Flats immediately in order to ensure clean title to the Subject Flats, and that if any Goods and Services Tax became payable on account of the title becoming clear, the same would be borne by the Purchaser-Respondents. Anmol Alliance also confirmed that any onward sale of the flats by the Purchaser-Respondents would always be given a No Objection Certificate by Anmol Alliance, without charging any transfer charges.

39. Vitally, in consideration of the foregoing, in Recital “J” of the MOU, it is provided that the Chhabria Family would provide “financial assistance” to the tune of Rs. 50 Lakhs to Anmol Alliance while the Punjabi Family would provide “financial assistance” to the tune of Rs. 20 Lakhs to Anmol Alliance subject to completion of the flats as contracted in Clause “E” recited in the MOU, along with all necessary amenities. At the very execution of the MOU, Anmol Alliance also confirmed receipt of Rs.10 lakhs against each car parking associated with the 12 flats and shared allotment letters.

40. It goes without saying that when disputes are settled between parties, it is open to the parties to also withdraw contempt proceedings. While the exercise of discretion to conduct contempt proceedings is in the domain of the Court, such discretion can also be informed by whether the contempt proceedings have been rendered infructuous by the parties settling their disputes. It is well settled that when parties have resolved their disputes and have reduced to writing the terms on which their disputes have been settled, it is a matter of public policy that unless the settlement is contrary to law, Courts would lean in favour of enforcing the settlement and binding the parties to their terms. In any case, as stated above, contempt is a matter between the Court and the alleged contemnor. In exercising its discretion on whether to bring to bear the heavy hand of the contempt jurisdiction, the Court’s actions could well be informed by the party alleging contempt having made peace by

way of a settlement. The discretion as to whether the Court should bring to bear its contempt jurisdiction can also be informed by whether the party prosecuting a contempt petition is resiling from a settled bargain to dispose of the contempt proceedings.

41. The Petitioners have clearly agreed to drop the Purchaser-Respondents from these contempt proceedings and have even pocketed monetary consideration for the same. The very same Subject Flats that are held up as “*custodia legis*” on behalf of the Petitioners by Mr. Kumbhakoni are subject matter of acknowledged *bona fide* legitimate purchase in the MOU executed by Amkhim’s director, acting on behalf of Anmol Alliance. To now contend that as a matter of law there is no option but to have the Sale Deed reversed would mean that the Petitioners can pocket money for dropping these very proceedings and yet refrain from dropping them on the premise that this Court too has no option but to annul the Sale Deeds, only so that the very same Subject Flats come back to the Anmol Alliance even while they have pocketed monetary consideration for having resolved all disputes including the contempt proceedings against the Purchaser-Respondents. In my view, it is allowing such conduct would injure the majesty of this Court, which lies at the heart of the exercise of jurisdiction by this Court.

42. Mr. Daver rightly points out that pursuant to the MOU, the parties even filed Consent Terms dated March 30, 2022 (“**Consent Terms**”) before another bench of this very Court to settle all disputes and differences between them in relation to Flat No. 1101, which was the subject matter of Commercial Suit No. 1453 of 2019 (“**CS 1453**”), which had been filed by Amkhim, Kotak and Anmol Alliance against Respondent No. 3, Mr. Ganesh Chhabria, and one Vijayeta Chhabria, as indeed against Zaveri Constructions and Fedbank. These Consent Terms not just settled all disputes and differences that form the subject matter of the Suit, but went on to make an explicit reference to the Subject Flats that are subject matter of the captioned contempt proceedings, to record a commitment in Clause 4 of the Consent Terms that is identical to the bargain recorded in Clause “E” recited in the MOU. Clause 4 of the Consent Terms reads thus:

“4) The Plaintiffs agree to complete the total work in all respects that is electricity wiring with meter, full plumbing, sliding work, rallying, glass windows panels, flooring, bathrooms with fitting, door, etc. as mentioned in the agreement for the following flats Nos. 404, 408, 901, 911, 1101, 1102 which Defendant No.1 and 2 already have possession also.

And Defendant No.1 and 2 totally will pay Rs. 6,00,000/- (Rupees Six Lakh Only) each for flat nos. 404, 408, 901 once the flats are complete in all respects as per agreements.

And Defendants No.1 and 2 totally will pay Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) each for flat nos. 1101 and 1102 once the flats are complete in all respects as per agreement. And also as per clause No.4 mentioned above.”

[Emphasis Supplied]

43. Nothing can be farther from upholding the majesty of the Court than accepting the Petitioners' contention that this Court must annul the Sale Deeds ostensibly in exercise of its contempt jurisdiction, when the Contempt Petitioners have signed a settlement, pocketed consideration for the settlement, and have committed to withdrawing the Contempt Petition, and now contend that this Court is duty-bound to annul the Sale Deeds regardless of the aforesaid factual position. That apart, in undertakings given by the Contempt Petitioners to this very Court, indeed in another proceedings i.e. CS 1453, each of the Subject Flats— Flat No. 404, Flat No. 408 and Flat No. 1102 – committed by them to be completed in all respects “as per agreement”. Such commitment and undertaking is to comply with the very Sale Deeds that the Petitioners now want annulled in exercise of contempt jurisdiction in the captioned proceedings. Accepting such conduct would constitute endorsement of undermining the majesty of this Court and helping the Petitioners resile from binding commitments made to this Court in CS 1453, in which the Consent Terms have been converted into a Consent Decree.

44. There are even more reasons to reject the Petitioners' attempt to use these proceedings to resile from a decree of this Court passed in CS 1453. Mr. Daver points to multiple receipts executed on the letterhead of Anmol Alliance by Mr. Narendra Amritlal Popat of Amkhim Holdings, demonstrating receipt

by Anmol Alliance, of various amounts from the Chhabria Family pursuant to the MOU. Mr. Daver also points out that an application for formation of the Eleganzia Royale Co-operative Housing Society was filed by none other than Mr. Narendra Amritlal Popat of Amkhim Holdings in his capacity as the Chief Promoter, enclosing therein a resolution of the society dated April 10, 2022, which squarely records the signatures of various members of the Punjabi Family. The minutes of the meeting of the Society entail various resolutions proposed or seconded by members of the Chhabria Family and the Punjabi Family. The minutes of such meeting have been signed by the very same Mr. Narendra Amritlal Popat in his capacity as the Chief Promoter in the Application for formation of the Society.

45. The upshot of these submissions by Mr. Daver is that the implications of the Status Quo Order, of which contempt is alleged, for the Purchaser-Respondents has come to firm end and that is demonstrated by documentary evidence of such position being accepted by the Petitioners. Therefore, it would be wholly unfair, inequitable and inappropriate for the Petitioners to seek reversal of the Sale Deeds in the teeth of demonstrated conduct by Amkhim and Kotak after the filing of the Contempt Petition. In a nutshell, they have committed to dropping the Purchaser-Respondents from the contempt proceedings; they have acted upon the same; they have accepted the monies referred to in the MOU; they have signed the Consent Terms which are

converted into a Consent Decree by order dated March 31, 2022, by which, the Consent Terms were directed to be converted into a consent decree in disposal of CS 1453.

Case Law Analysed:

46. Mr. Kumbhakoni would counter Mr. Daver's contentions by contending that the contempt of the Court's order would render the Sale Deeds void as declared by a Learned Division Bench of this Court in ***Keshrimal'***, in particular, in Paragraphs 23 to 31, which would emphasise the law declared by the Supreme Court in the case of ***Surjit Singh***², ***Ramachandra***³ and ***Satyabrata***⁴. Invoking the law declared in these judgements, he would submit that if immovable property is transferred during the pendency of an order of injunction, there is no choice for the Court but to declare the transaction illegal and therefore there would be no further basis to decide the true nature and effect of the order of injunction. Mr. Kumbhakoni would submit that in the teeth of an injunction issued by a Court, a party could never be permitted to reap the advantage or benefit of being a transferee in such a transaction and the transfer must never be upheld. Not doing so would permit a party to get away with violation of Court orders and would result in

1 *Keshrimal Jivji Shah And Another v. Bank of Maharashtra And Others* – 2004 SCC OnLine Bom 368

2 *Surjit Singh And Others v. Harbans Singh And Others* – [1995] 6 SCC 50

3 *Ramchandra Ganpat Shinde & Anr. v. State of Maharashtra & Ors.* – AIR 1994 SC 1673

4 *Satyabrata Biswas v. Kalyan Kumar Kisku* – AIR 1994 SC 1837

upholding transactions that are evidently contrary to the directions issued by the Court, by resort to penalties instead of avoiding the transaction.

47. Section 2(b) of the Contempt of Courts Act, 1971, defines the expression “civil contempt” to mean “wilful disobedience” of a Court’s order. This must necessarily point to an act or omission which is done voluntarily or intentionally and with specific intent to do something which is forbidden or to refrain from doing something which the law requires to be done. Courts have held that a *mala fide* intent i.e. the bad purpose to disobey or disregard the law, must be manifested in a deliberate action taken or refrained from being taken, with an evil intent or a bad motive or purpose.

48. Indian Courts have usually used the term “*contumacious conduct*” synonymously and contextually with “*wilful disobedience*”. The term “*contumacious*” essentially means being stubbornly disobedient and rebellious (*Merriam-Webster’s Dictionary*); refusing to obey or respect the law in a way that shows contempt (*Cambridge Dictionary*); and having no respect for authority (*Oxford Learner’s Dictionary*). The word “*contumacious*” derives from the Latin root “*tumere*”, meaning “to swell” or “to be proud”, pre-fixed by “*con*”, meaning “completely”. In other words, the term connotes action by a person completely swollen and proud acting *contumely* i.e a person who is insolent, rude and acts with disdain. In the context of contempt jurisdiction, it

would need to indicate insolent and rude disdain for the obligation to comply with the Court's order. The position that the Purchaser-Respondents found themselves in and their conduct would hardly partake of the aforesaid characterisation.

49. Courts have also repeatedly referred to “mala fide” or “evil” intention being a facet of determining if there has been “wilful disobedience”. It is in that context that one has to examine the role of the Purchaser-Respondents, who were not parties to the Section 9 Petition in the first place. The context and circumstances in which the Sale Deeds were executed, would show that the Purchaser-Respondents were faced with losing all the flats that they legitimately acquired from Anmol Alliance, the partnership firm of the Petitioners. The Petitioners indeed have grievances about the manner of conduct of the firm's affairs by Zaveri Constructions. However, it is quite well settled that the acts of a partner bind the firm and its other partners when the partner is acting under express or implied authority. *Inter se* disputes among partners may arise and exist but that cannot affect third parties who engage with the partnership firm. The Purchaser-Respondents found their flats mortgaged to Fedbank. Possession of these flats under the SARFAESI Act was imminent. As stated earlier, their action of securing their flats is not in alignment with Zaveri Constructions but a step in securing their interests

against the conduct by Anmol Alliance including Zaveri Constructions. They cannot be regarded as abetting contempt by Zaveri Constructions.

50. That apart, after death of the key promoter of Zaveri Constructions, the Petitioners struck a deal with the Purchaser-Respondents to settle all disputes on terms articulated above, in the section dealing with the Petitioners' conduct after filing this Contempt Petition. In ***Balwantbhai Somabhai***⁵, the Supreme Court has clearly articulated that a transfer in breach of a Court Order is not *ab initio* void and instead, the principles to be adopted to declare such transfer to be void have been spelt out. The following extracts are noteworthy:

Principles governing the exercise of contempt jurisdiction

39. The object of the discipline enforced by the court in case of contempt of court is not to vindicate the dignity of the court or the person of the Judge, but to prevent undue interference with the administration of justice.

Pivotal issues

48. We would like to address ourselves broadly on four questions :

48.3 Whether the contempt court has the power to declare any contemptuous transaction non est or void? In other words, although the transfer of the suit property pendente lite is not void ab initio yet when the court is looking into such transfers in

5 *Balwanthhai Somabhai Bhandari v. Hiralal Somabhai Contractor (Deceased)* - 2023 SCC OnLine SC 1139

contempt proceedings, whether the court can declare such transactions to be void in order to maintain the majesty of law?

83. We are aware of the two decisions of this Court one in Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd. [Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd., (2013) 5 SCC 397] and T. Ravi [T. Ravi v. B. Chinna Narasimha, (2017) 7 SCC 342]. In both these decisions, the view taken is that Section 52 of the Transfer of Property Act, 1882 (for short “the 1882 Act”) does not render transfers affected during the pendency of the suit void but only render such transfers subservient to the rights as may be eventually determined by the court.

84. In Thomson Press [Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd., (2013) 5 SCC 397] , T.S. Thakur, J. in his separate judgment while supplementing the judgment authored by M.Y. Eqbal, J., observed as under: (SCC p. 424, para 53)

“53. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued by a competent court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor.”

Conclusions:

117. We may summarise our final conclusion as under:

117.3 Although the transfer of the suit property pendente lite may not be termed as void ab initio yet when the court is looking into such transfers in contempt proceedings the court can definitely declare such transactions to be void in order to maintain the majesty of law. Apart from punishing the contemnor, for his contumacious conduct, the majesty of law may demand that appropriate directions be issued by the court so that any advantage secured as a result of such contumacious conduct is completely nullified. This may include issue of directions either for reversal of the transactions by declaring such transactions to be void or passing appropriate directions to the authorities concerned to ensure that the contumacious conduct on the part of the contemnor does not continue to enure to the advantage of the contemnor or any one claiming under him.

117.4 The beneficiaries of any contumacious transaction have no right or locus to be heard in the contempt proceedings on the ground that they are bona fide purchasers of the property for value without notice and therefore, are necessary parties. Contempt is between the court and the contemnor and no third party can involve itself into the same.

[Emphasis Supplied]

51. A plain reading of the foregoing would show that in the view of the Supreme Court, the Sale Deeds are not necessarily and in absolute terms void. The Court has to examine the factual matrix and take a contextual view as to whether the majesty of the Court is being injured. The law cited on behalf of the Petitioners is overtaken by the declaration of the law in **Balwantbhai Somabhai**, from which portions relevant to the matter in hand, have been

extracted above. By the reiteration and endorsement of **Thomson Press**⁶ and that too in the context of contempt proceedings, by necessary implication, the law declared in **Keshrimal** and relied upon by Mr. Kumbhakoni has been overtaken and declared differently by the Supreme Court in **Balwantbhai Somabhai**. Indeed, the core principle is that the majesty of the rule of law and sanctity of administration of justice must inform the approach of the Court when exercising its discretion in the contempt jurisdiction.

Conclusion:

52. Applying these principles to the facts of the case, I find that the majesty of the Court would be injured by declaring the Sale Deeds to be void. The Petitioners have committed to complete and provide the very same Subject Flats that lie at the heart of these contempt proceedings, and that too in accordance with the very Sale Deeds that the Petitioners desire to have nullified in these contempt proceedings. Such commitment forms part of a Consent Decree approved by this Court in disposal of CS 1453. By executing the MOU, the Petitioners have endorsed and wiped out the very grievance that lies at the heart of these contempt proceedings, and truly the consideration of an appropriate approach is solely in the domain of this Court and not the Petitioners.

6 *Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.* – (2013) 5 SCC 397

53. Worse, by resort to the contempt jurisdiction, a commitment made to this very Court in other proceedings cannot be permitted to be resiled from. Allowing such conduct would enable contempt of a final decree of this Court under the ostensible excuse of enforcing the majesty of the Court in relation to the Status Quo Order passed as a temporary measure under Section 9 of the Act. The Consent Decree and the commitments made in it have been contracted by valid consideration in the MOU, which consideration has been merrily pocketed by the Petitioners, all of which is subsequent to filing the Contempt Petition. The Petitioners now seek to use the contempt jurisdiction to erase their commitments given to Court and confirmed in the Consent Decree. Therefore, in my view, this is a fit case to refrain from exercising the contempt jurisdiction to grant the core prayer of the Petitioners – the annulment and voiding of the Sale Deeds.

54. In the circumstances, I am not inclined to exercise my jurisdiction to take action in exercise of powers in the contempt jurisdiction. In the peculiar facts of this case, the captioned Contempt Petition is ***dismissed*** without any directions.

55. Nothing contained in this judgement is an expression of an opinion on the merits of any question in issue in the ongoing arbitration proceedings. All

analysis in this judgement is relevant only for and made in the context of considering the exercise of the contempt jurisdiction.

56. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]